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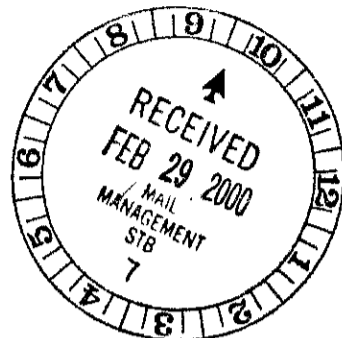
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February 28, 2000

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Re: STB Ex Parte No. 582 - Public Comments on
Major Rail Consolidations - Comments of US
Clay Producers Traffic Association, Inc.
Our File: 2452.63

UPS NEXT DAY

Surface Transportation Board
Office of the Secretary,
Case Control Unit
Attn: Ex Parte 582
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear Sir or Madam:

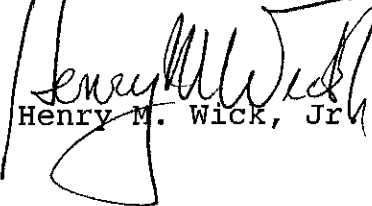
Please accept the enclosed Comments of the U.S. Clay Producers Traffic Association, Inc. ("Clay Producers") submitted for consideration in the Surface Transportation Board's Ex Parte 582 proceeding concerning major rail consolidations. In lieu of an oral presentation at the upcoming hearings, Clay Producers choose not to attend, but rather submit their comments via written statement.

We enclose the original document, 10 paper copies, and one electronic copy on 3.5 floppy disk in Word Perfect format, as required by your order of February 16, 2000.

If you have any questions, do not hesitate to call.

Very truly yours,

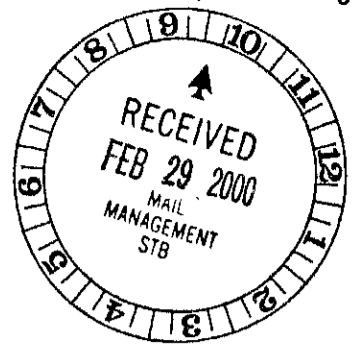
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Henry M. Wick, Jr.

SC
Enclosures
cc: Clay Producers (w/enclosure)

VP56768.WP

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Ex Parte No. 582

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

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Public Record

COMMENTS OF THE U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION, INC.

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Counsel for U.S. Clay Producers
Traffic Association, Inc

Dated: February 28, 2000

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No.582

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

COMMENTS OF THE U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION, INC.

I. INTRODUCTION

The U.S. Clay Producers Traffic Association, Inc. ("Clay Producers") file this statement with the expectation that the Surface Transportation Board ("Board") will consider fully exercising the existing power that has been delegated to it to ensure that the major Class I railroads are held responsible for the harm they cause from hasty, poorly planned mega-mergers. A renewed emphasis on full accountability, with reduced procedural barriers for enforcement, would be a rational, market based improvement which the Board can implement to encourage railroads to more seriously weight the costs and benefits of a proposed consolidation. Clay Producers are presently suffering significant losses from the latest transaction - that involving the carving up of Conrail - and based on the group's experience, offer comments and suggestions set forth below.

II. DESCRIPTION OF CLAY PRODUCERS AND THEIR RAIL TRAFFIC

U.S. Clay Producers Traffic Association, Inc. (Clay Producers) is a non-profit association of producers of clay engaged in producing and shipping clay in all modes of transportation from the relatively concise geographic location of clay deposits in Georgia,

South Carolina and Tennessee origins to numerous industries throughout the United States, Canada, Mexico, and the world. The Association was formed to provide information to members concerning transportation of clay by railroads, motor carriers and by water, as a forum for discussion of developments and information concerning regulation by governing authorities, and to represent the interests of its members in transportation matters before regulatory agencies, such as this Board.

The members of the Clay Producers, parties to these Comments, represent approximately 95% of the industry in terms of total clay shipments. The principal clay shippers represented in these Comments and their respective offices are:

Albion Kaolin Company	Hephzibah, GA
Dry Branch Kaolin (IMERYS)	Dry Branch, GA
ECC International (IMERYS)	Atlanta, GA
Engelhard Corporation	McIntyre, GA
Evans Clay Company	McIntyre, GA
H.C. Spinks Clay Co., Inc.	Paris, TN
J. M. Huber Company.	Edison, NJ
Oil-Dri Corporation of America	Ochlocknee, GA
Thiele Kaolin Company	Sandersville, GA
Unimin Corporation	New Canaan, CT
Wilkinson Kaolin Associates, Ltd.	Gordon, GA

Clay Producers utilize a fleet of over 6,600 tank and hopper cars to move approximately 11 million tons of clay annually from a relatively concise geographic area in Georgia, South Carolina and Tennessee to customers located throughout the United States, Canada, Mexico, and the rest of the world. Clay Producers represent over 95% of the clay tonnage shipped. Clay Producers' clay traffic is heavy and not easily handled by truck. It is captive to the railroads since over 60% of the domestic shipments move over 500 miles and 40% move over 1,000 miles.

III. COMMENTS

Without exception, all members of Clay Producers report that the recent consolidation of Class I railroads has caused them severe, direct and indirect financial injuries and has forced them to restructure their long standing transportation practices. In general, as consumers of rail services, the Clay Producers have yet to see a benefit from the recent consolidations. In particular, these shippers are reeling from the problems caused by the major Conrail asset acquisitions by CSX Transportation and Norfolk Southern Railway Company. These carriers are the two principal servicing railroads for Clay Producer members.

Clay Producers have become well aware of the tendency of Class I railroads to act imprudently so that they are not left behind in the mad dash for bigger and bigger rail networks. The Board is well aware of the service melt-downs caused by the UP/SP merger and the Conrail carve up. Hopefully, there are lessons which have been learned. Perhaps, with the benefit of hindsight, if merging railroads knew they would be held accountable for all costs, direct and indirect, caused by merger miscalculations, they would check their math before proceeding head strong and unprepared into a monumental combination of rail assets.

The surviving railroad should be held fully accountable for all merger related costs - not just the increased cost of alternative transportation. The Board should develop an administrative procedure for adjudication of damage claims and define allowable damages to include: (1) the increased cost of alternative transportation and/or additional rail equipment necessitated by service disruptions; (2) loss of profit experienced by shippers for instances of lost sales or curtailed production caused by service disruptions; and, (3) increased overhead and administrative costs and expenses represented by extra time shippers spend attending to service disruption matters.

As shippers, Clay Producers have borne the costs of merger miscalculations in terms of increased car costs, customer complaints and substantial administrative time. Clay Producers

have dearly paid a substantial price for the Conrail acquisition in terms of additional direct and indirect transportation costs. For example, immediately after the Conrail switch date, Clay Producers have been forced to incur costs for a minimum of an additional 500 tank cars. This translates into an additional \$3 million dollars per year in added car costs. It is more difficult to estimate the precise cost of the additional administrative time our traffic departments have spent in arranging alternative transportation, responding to customer inquiries about shipments and tracking down lost cars; however, those costs are substantial and should be the responsibility of the responsible railroads.

Clay Producers ship raw materials to customers who depend upon a ready supply for their manufacturing operations in the productions of high quality paper, ceramics, sanitary ware, insecticides, cattle feed paint and adhesives. Service disruptions cause serious problems both for Clay Producers as well as our customers. Clay is a heavy and bulky commodity and customers cannot easily adjust their inventory design to stockpile to protect against rail service delays. Just-In-Time inventory practices have been widely adopted across all manufacturing industries over the past few decades. For our customers, the inventory of raw materials involves extensive logistical calculations and any factor which upsets the assumptions can cause a snowball effect of production slowdowns or shutdowns. These conditions result in additional car requirements for Clay Producers.

Clay Producers are concerned with the announced BNSF/CN merger primarily for its potential downstream effect. The enormous resulting railroad system would be peerless. Since nature abhors a vacuum, we know that UP, CSX and NS would all begin looking into a reactionary merger or other protective actions, and thus divert valuable managerial resources away from dealing with the existing service disruption problems caused by the recent consolidations. Clearly, these lines would not tolerate being second-rate to a monster railroad. The Board should send a clear message to UP, CSX and NS that they must stay focused on their existing systems. It is highly unlikely that any of these lines have either the ability, or

the stamina, at this point to deal with both the internal problems of the acquisition and the competitive reality of a BNSF/CN merger on their doorstep. Therefore, because of the potential serious adverse effect of the merger, particularly on CSX and NS, Clay Producers must, at this time, oppose the BNSF/CN merger.

Clay Producers believe that railroads currently fail to accurately consider their liability for merger related costs. Perhaps, railroads discount their potential liabilities based on the knowledge that shippers will face the burden of proof of establishing in civil courts that certain costs are truly caused by merger problems. In the civil courts, some types of indirect damages, such as those for loss of profit on production curtailments, are difficult to recover and, consequently, the risk of such harm is heavily discounted in the railroads' decision-making process. However, since the Board has broad powers in approving mergers, Clay Producers propose that the Board sets up a mechanism¹ which makes railroads more clearly responsible for bearing all cost of service disruptions. By leveling the playing field in this manner, the Board would be using a market based approach (allocating the cost of damages to the responsible party) and thus would encourage railroads to more carefully analyze planned mergers and consolidations. If railroads are compelled to address the possibility of shouldering substantial shipper damage awards, perhaps they will proceed more cautiously.

IV. PROPOSALS

1. The Board should increase the procedural burden of Class I railroads in proposed mergers by requiring submission of: (a) detailed contingency plans examining the possibility of resulting service disruptions; and, (b) shipper impact estimates. By requiring railroads to develop this evidence, the Board will force railroads to take a good hard look at the possibility that their actions can cause serious harm.

¹ An administrative procedure would result in a single, uniform body of law defining the standards of proof, adequacy of evidence and measure of damages - a vast improvement over the patchwork quilt shippers saw as civil courts grappled with undercharge disputes.

2. Before approving any further Class I rail mergers, the Board should require the railroads to present detailed proof of their ability to smoothly assimilate the merged lines without a deterioration in service as measured by transit times and terminal dwell times.

3 To ensure that the railroads do not shift the cost of a merger miscalculation upon shippers, the Board should impose merger conditions on the surviving railroad making it liable to cover merger related delay/alternative transportation damages suffered by shippers. The resolution of claims which the parties are unable to resolve amicably should be handled in an informal administrative procedure created by the Board. With such a procedure, shippers would not be forced to use thousands of civil courts across the country, but rather could utilize a streamlined administrative proceeding adjudicated by Administrative Law Judges who are familiar with concepts such as transit time, terminal dwell and car leasing arrangements.

V. CONCLUSION

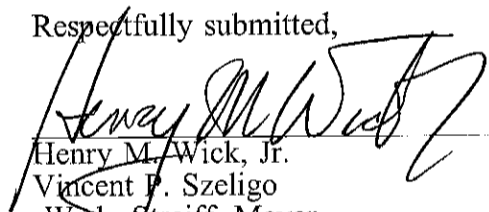
U.S. Clay Producers Traffic Association, Inc., urges the Board to revise its procedures in such a way that merging Class I railroads become more careful and cautious in entering into large scale mergers. Although such measures would increase the burden on merger candidates, and perhaps discourage some deals, increased caution is clearly called for in light of the problems from recent merger miscalculations.

Thomas G. Flaherty
**President, U.S. CLAY PRODUCERS
TRAFFIC ASSOCIATION, INC,**

Dated: February 28, 2000

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Respectfully submitted,


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